

In the Supreme Court

Appeal from the Court of Appeals
Hon. William C. Whitbeck
Hon. David H. Sawyer
Hon. Kathleen Jansen

KEVIN SMITH,

Plaintiff-Appellee,

v

LOUIE KHOURI, D.D.S. and
LOUIE KHOURI, D.D.S., P.C. and
ADVANCE DENTAL CARE CLINIC, L.L.C.,

Docket No. 132823
COA No. 262139
Oakland CC No. 2003-047984-NH

Defendant-Appellants.

APPELLEE'S SUPPLEMENTAL BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

PROOF OF SERVICE

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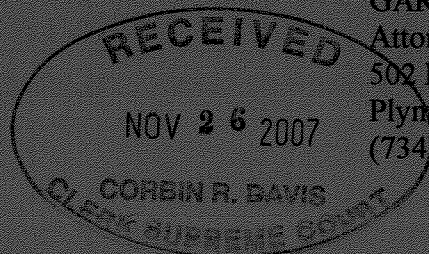


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SUPPLEMENTAL INDEX OF AUTHORITIES

Lash v. Lynch, D.D.S., Case No. 03-332425-NH, Wayne County
Circuit Court, Honorable John A. Murphy presiding.....1,2

JURISDICTIONAL STATEMENT

Appellee adds no further statement.

COUNTER-STATEMENT OF QUESTIONS INVOLVED

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION
WHEN IT AWARDED PLAINTIFF'S REQUESTED ATTORNEY FEE
OF \$450 PER HOUR AND ASSOCIATES AT \$275 PER HOUR?

Defendant/Appellants answer: Yes.

Plaintiff/Appellee answers: No.

The Trial Court answered: No.

The Court of Appeals answered: No.

SUPPLEMENTAL COUNTER-STATEMENT OF FACTS

Plaintiff-appellee tried a dental malpractice case in 2006 receiving a favorable jury verdict and case evaluation sanctions before the Honorable John A. Murphy in the Wayne County Circuit Court, Lash v. Lynch, D.D.S., Case No. 03-332425-NH. On June 20, 2006, Judge Murphy awarded plaintiff's attorney \$400 per hour and associate time at \$200 per hour. The plaintiff's attorney was Robert Gittleman and defense counsel was the same as the defense counsel who tried this case, Mr. Gary Felty and Mr. Keith Felty. Defense counsel waived any evidentiary hearing and agreed to the reasonableness of \$400 per hour for Robert Gittleman, and \$200 per hour for the associate fee. See Supplemental Appendix containing June 30, 2006 Order. The defendants did not appeal the June 30, 2006 Order Granting Plaintiffs' Motion for Taxed Bill of Costs and Case Evaluation Penalties.

THE TRIAL COURT DID NOT ABUSE IT'S DISCRETION WHEN IT AWARDED PLAINTIFF'S REQUESTED ATTORNEY FEE OF \$450 PER HOUR AND ASSOCIATES AT \$275 PER HOUR.

STANDARD OF REVIEW

Appellee does not supplement any further.

ANALYSIS

A. WHETHER THE TRIAL COURT EVALUATED ALL FACTORS RELEVANT TO THE DETERMINATION OF A REASONABLE ATTORNEY FEE; WHETHER THE TRIAL COURT APPLIED SUCH FACTORS TO ALL ATTORNEYS INVOLVED; AND WHETHER IN PARTICULAR THE TRIAL COURT PROPERLY APPLIED FACTORS PERTAINING TO THE FEES CUSTOMARILY CHARGED IN THE LOCALITY FOR SIMILAR LEGAL SERVICES, THE NOVELTY AND DIFFICULTY OF THE QUESTIONS INVOLVED, AND THE SKILL REQUISITE TO PERFORM THE LEGAL SERVICES?

Appellee answers yes.

The Lash v. Lynch, D.D.S., supra., June 30, 2006 Order Granting Plaintiff's Motion for Taxed Bill of Costs and Case Evaluation Penalties documents Mr. Robert Gittleman was awarded \$400 per hour and his associates \$200 per hour and such fees were reasonable as stated by the trial court and admitted by defense counsel, Mr. Gary Felty, the same defense counsel as in this case. Defense counsel "waives any evidentiary hearing with regard to the reasonableness of the rate of four hundred dollars (\$400.00) and two hundred dollars (\$200.00), respectively, for attorney fee rates." See June 30, 2006 Order attached to plaintiff-appellee's Supplemental Appendix. The defendant in Lash, supra. never appealed this case to the Court of Appeals.

The June 30, 2006 also evidences another jurisdiction, the Wayne County Circuit Court, in which Mr. Robert Gittleman was awarded \$400 per hour and his associates \$200 per hour.

B) 1. WHETHER IT IS RELEVANT TO CONSIDER THE PROPORTIONALITY BETWEEN THE AMOUNT OF ATTORNEY FEES AND THE AWARD OF DAMAGES?


Appellee answers no. Appellee does not supplement any further.

B) 2. WHETHER, IF THE PLAINTIFF RETAINED HIS ATTORNEYS PURSUANT TO A CONTINGENT FEE AGREEMENT, THIS FACT SHOULD AFFECT THE CALCULATION OF REASONABLE ATTORNEY FEES ON THE BASIS OF HOURLY RATES?

Appellee answers no. Appellee does not supplement any further.

RELIEF REQUESTED

Plaintiff-Appellee requests this Honorable Court affirm the Court of Appeals and Trial Court.



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Dated: November 22, 2007

248-
865-7519

Lash Order

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELISA LASH and RANDALL LASH,

Plaintiffs,

v.

PATRICK W. LYNCH, D.D.S.,
PATRICK W. LYNCH, D.D.S. &
ASSOCIATES and PATRICK W.
LYNCH, D.D.S., P.C., Jointly
and Severally,

03-332425-NH 9/29/2003
JDG: JOHN A MURPHY
ASH ELISA
vs
YNCH PATRICK W DDS

Defendants.

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ORDER GRANTING PLAINTIFFS' MOTION FOR TAXED BILL
OF COSTS AND CASE EVALUATION PENALTIES

At a session of said Court, held in
the City of Detroit, County
of Wayne, State of Michigan,

on JUN 30 2006

PRESENT: HON. JOHN A. MURPHY
CIRCUIT COURT JUDGE

Upon the Court reading all Motions and Responses by both
parties, and having heard oral argument,

IT IS HEREBY ORDERED Plaintiffs' Motion for Taxed Bill of
Costs and Case Evaluation Penalties is granted to include all bill
of costs listed on the record.

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